

REMARKS/ARGUMENTS

I. INTRODUCTION

Claims 1 -3 and 5-9 are pending.

The Examiner rejected claims 1-3 and 5-9 under 35 U.S.C. §102(b) as being anticipated by Tiwari et al (Series of Abstraction for Hybrid Automata, pages 465-478, allegedly dated 2/4/2002).

The Examiner further rejected claims 1 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Tiwari et al., in view of Hsieh et al. (IEEE 1998, Model Abstraction for formal verification).

The Examiner further rejected claims 8 and 9 under 35 U.S.C. § 103(a) as being unpatentable over Tiwari et al., in view of Lincoln et al. (USPG_PUB No. 2003/0033126).

Reconsideration of the application in view of the evidence presented and the remarks herein is respectfully requested.

II. CLAIM REJECTIONS

A. REJECTION OF CLAIMS under 35 U.S.C. 102(b)

Applicants respectfully point out the publication date of record for the cited reference, Tiwari et al (Series of Abstraction for Hybrid Automata), is March 25, 2002. The date that the Examiner cites – February 4, 2002 – is without support in the current record. Applicants respectfully submit that the initial burden is on the Office to provide evidence of the date of public accessibility of the cited reference before it may be used to support a rejection under 35 U.S.C. § 102. *See, e.g.,* MPEP 706.02(a)(I).

Notwithstanding the burden, in the interests of advancing prosecution, Applicants respectfully proffer the attached affidavit of Ashish Tiwari under 37 C.F.R. § 1.132 to rebut the Examiner's position. On the basis of this affidavit, Applicants respectfully submit that the

Tiwari et al. reference was published no earlier than February 11, 2002. Applicants' priority date is February 11, 2003. As the *Tiwari et al.* reference was therefore not a printed publication more than one year before Applicants' priority date, it is not available to form the basis of a rejection under 35 U.S.C. § 102(b). The Applicants therefore respectfully request that the rejection be withdrawn.

B. REJECTION OF CLAIMS under 35 USC 103(a)

As the *Tiwari et al.* reference is unavailable as prior art under 35 U.S.C. § 102, it is also not available to support a rejection under 35 U.S.C. § 103. Hence, Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 103(a) for at least this reason.

III. CONCLUSION

In view of the foregoing, it is respectfully urged that all of the present claims of the application are patentable and in a condition for allowance. Notice of allowance is earnestly solicited. The undersigned attorney can be reached at 650-283-0848 to facilitate prosecution of this application, if necessary.

Respectfully submitted,

NEVILLE LAW GROUP

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By: 

Deborah Neville
Registration No. 34,886

PO Box 61063
Palo Alto, CA 94306
Telephone: (650) 283-0848